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February 7, 1983

Mr. Thomas A. Swist, Chairman
Electricians Licensing Board
Hazen Drive
Concord, New Hampshire 03301

Dear Mr. Swist:

This is a response to your request for an informal opinion dated January 24, 1983, and confirms our telephone conversations of Wednesday, February 2, 1983. I have reviewed all the materials provided to me. The question you have raised relates to whether the Electricians Board has any authority over a waiver of a local electrical code installation requirement by a local building inspector. I am in general agreement with the memorandum offered by Edward A. Haffer, Esquire, that such waivers may be granted by local building inspectors and are not within the jurisdiction of the Electricians Board.

The general authority of the Board as outlined in RSA 319-C:6-a (Supp.) relates to the qualifications and competency of electricians. This authority also extends to the ethical and professional standards required to be met by each licensee and procedures for investigation and disposition of complaints against licensees. The Board also has authority through its inspectors to order the removal or correction of any violation of any rule adopted under RSA 319-C:6-a (Supp.). See RSA 319-C:5, III (Supp.). The rule which relates to this matter is Rule 404.01, which requires installation in compliance with the 1981 NEC. Pursuant to RSA 156:1 and 2, local communities have the authority to regulate construction. Local communities are also authorized by RSA 156-A:1, I to adopt the BOCA basic building code. Acting pursuant to that authority, the City of Laconia has adopted the BOCA code and has also adopted for the purposes of establishing rules and regulations for electrical constructions, the 1981



National Electrical Code. The 1981 BOCA code also expressly incorporates by references the 1981 National Electrical Code. Section 90.4 of the 1981 NEC provides that "the authority having jurisdiction may waive specific requirements in this code or permit alternate methods, where it is assured that equivalent objectives can be achieved by establishing and maintaining effective safety." As a result, the City of Laconia acting through its building inspector does have the authority to waive provisions of the 1981 NEC provided that sufficient alternative assurances and protections are provided.

The City of Laconia may therefore allow for a waiver of the requirements of the 1981 NEC without violating a regulation of the Board which would be subject to enforcement under RSA 319-C:5, III (Supp.). This waiver of course would have to be based upon the building inspector's receipt of sufficient assurances that the public safety has not been compromised. Although I do not believe that the Board in this situation has the authority to conduct a hearing relative to the Laconia building inspector's decision, it would be appropriate for the Board to inquire of the building inspector by letter whether a waiver was in fact granted and if so what alternate assurances were received relative to the protection of the public safety. For the Board's information, I have reviewed the documents provided by Tyler E. Carlisle and Samuel Gronich which, based upon their expert opinion, would appear to at least belatedly provide such assurances.

Please let me know if you have any questions.

Sincerely,

Marc R. Scheer
Assistant Attorney General
Division of Legal Counsel

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